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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,685	11/12/2003	James F. McGuckin JR.	1238DIV	7009
7590 NEIL D. GERSHON REX MEDICAL 1011 HIGH RIDGE RD Stamford, CT 06905				
EXAMINER SCHILLINGER, ANN M				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
10/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/706,685

Applicant(s)

MCGUCKIN ET AL.

Examiner

ANN SCHILLINGER

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 8-12, 15, 16, and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Love et al. (US Pat. No. 5,843,164). Love et al. discloses the following of the claimed invention: a vascular device (1, 2, 3) comprising a plurality of vessel engaging members (6a, 6b) with penetrating tips (Fig. 3) that pierce the vessel wall. The device is movable from a collapsed insertion position having a first diameter to a second expanded position having a second diameter larger than the first diameter via a balloon catheter. When the balloon is deflated and removed, the device will inherently pull inwardly on the vessel wall as it moves towards its third expanded diameter (col. 27, lines 43 through col. 28, lines 34). The device is substantially conical in shape (Fig. 1), and the longitudinal axis of the valve offset from that of the vascular device (Fig. 5a). The device has a proximal and a distal opening, and a reinforcement ring (10) adjacent to the distal opening (Fig. 5b). Love et al. discloses the limitations of claims 9-11 as shown in Figures 1-6a. The device may be made of stainless steel (col. 20, line 60 through col. 21, line 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love et al. in view of Flomenbilt et al. (US Pat. No. 5876434). Love et al. teaches the invention substantially as claimed, however, Love et al. does not teach the use of shape memory material with exposure to body temperature to control the alterations of the device. Flomenbilt et al. teaches shape memory material and exposure to body temperature in col. 2, lines 37-65 and col. 4, line 66 through col. 5, line 15 for the purpose of causing the device to assume the necessary configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use shape memory material with exposure to body temperature in order to cause the device more easily assume the necessary configuration.

Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love et al. in view of Wilson et al. (US Pat. No. 5876434). Love et al. teaches the invention substantially as claimed, however, Love et al. does not teach the use of blood drainage openings. Wilson et al. teaches these openings in col. 2, lines 42-65 and col. 3, line 66 through col. 4, line 7 for the purpose of relieving excess pressure. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use these openings in order to relieve excess pressure.

Response to Arguments

Applicant's arguments with respect to claims 1-17 and 31-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./
Examiner, Art Unit 3774

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774